

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY
OF FIRST NATIONS,

Complainants,

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission,

- and -

ATTORNEY GENERAL OF CANADA
(MINISTER OF INDIGENOUS AND NORTHERN AFFAIRS CANADA)

Respondent,

- and -

CHIEFS OF ONTARIO

- and -

NISHNAWBE ASKI NATION

- and -

AMNESTY INTERNATIONAL

Interested Parties.

**MOTION FOR INTERESTED PARTY STATUS – WRITTEN SUBMISSIONS
CONFEDERACY OF TREATY SIX FIRST NATIONS**

Pursuant to Rule 27 of the Canadian Human Rights Tribunal Rules of Procedure,
SOR/2021-137

COCHRANE SINCLAIR LLP

1152 Mainland St Suite 200,
Vancouver, BC V6B 4X2

AARON CHRISTOFF

Ph. No.: (604) 901-3253

Email: achristoff@cochranesinclair.ca

A. Introduction

1. The Confederacy of Treaty Six First Nations (“**CT6FN**”) – at the direction of and on behalf of its Member Nations – applies to the Tribunal for Interested Party status in the Ontario Final Settlement Agreement on Long-Term Reform of First Nation Child and Family Services (“**OFA**”) Approval Joint Motion filed by the Chiefs of Ontario (“**COO**”) and Nishnawbe Aski Nation (“**NAN**”).

2. CT6FN is a non-profit Treaty rights advocacy organization that was created in the Spring of 1993 to serve as the united political voice for affiliated Treaty No. 6 Nations in Alberta for the continued protection of the fundamental Treaty, Inherent and Human Rights of the Treaty Peoples of our Nations. CT6FN is dedicated to ensuring that the terms, spirit and intent of Treaty No. 6 and the right of the Treaty No. 6 First Nations to self-determination is honoured and respected. CT6FN represents a total of 16 Treaty 6 First Nations, Cree, Dene, Nakota, and Saulteaux/Anishnaabe, located in Alberta.

3. As set out in greater detail below, CT6FN’s expertise will be of assistance to the Tribunal, its involvement will add to the legal positions of the parties, and the outcome of the OFA Approval Joint Motion will have a significant impact on CT6FN and the Nations, children, and families represented by CT6FN.

B. Legal Test for Interested Party Status

4. Pursuant to Rule 27 of the *Canadian Human Rights Tribunal Rules of Procedure*, SOR/2021-137 (“**CHRT Rules**”), a party who wishes to be recognized as an interested party in a proceeding before the Tribunal may bring a motion for interested party status

which sets out the manner in which the party intends to provide assistance to the Tribunal and the extent of their desired participation.¹

5. The legal test for a party to be granted interested party status before the Tribunal is well-established. The test was outlined in the case of *Walden v Canada (Treasury Board)*, 2011 CHRT 19 (“**Walden**”) as follows:

[23] Concisely put, the case law indicates that interested party status has been granted in the past by the Tribunal in situations where:

- a) the prospective interested party's expertise will be of assistance to the Tribunal;
- b) its involvement will add to the legal positions of the parties; and
- c) the proceeding will have an impact on the moving party's interests.²

6. Subsequent case law confirms that the above test is to be applied flexibly, holistically and on a case-by-case basis, as opposed to a rigid analysis of each of the identified criteria.³ Further, the Tribunal has rejected the argument that a party may only be granted interested party status if all three of the above-noted criteria are met.⁴

7. Rather, the Tribunal has found that a party may be granted interested party status in cases where some, but not all, of the criterion are specifically met, where a holistic analysis supports the participation of the party as an interested party.⁵

¹ *Canadian Human Rights Tribunal Rules of Procedure*, SOR/2021-137 at Rule 27 [**CHRT Rules**].

² *Walden v Canada (Treasury Board)*, 2011 CHRT 19 at para 23 [**Walden**].

³ *Letnes v Royal Canadian Mounted Police*, 2021 CHRT 30 at paras 12-18 [**Letnes**]; See also: *Attaran v Citizenship and Immigration Canada*, 2018 CHRT 6 at paras 12 and 22 [**Attaran**]; *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 11 at para 3 [**NAN**].

⁴ *Letnes* at para 12.

⁵ *Letnes* at para 16, citing *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs of Canada)*, 2020 CHRT 31 [**Innu Nation**]. See also *NAN* at paras 3 and 8-11; *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 11 [**CAP**].

C. CT6FN Satisfies the Test for Interested Party Status

a) The Applicant's Expertise Will Assist the Tribunal

8. CT6FN can provide the Tribunal with the unique perspectives of its 16 member First Nations located in Alberta, all of whom will be impacted by the ultimate outcome of the Tribunal's decision on the OFA Joint Approval Motion. Without the participation of Confederacy of Treaty Six First Nations as an interested party, the Tribunal will not have the benefit of these perspectives when determining the motion.

9. CT6FN plays a vital role in representing Alberta Treaty 6 Nations and engages in advocacy on behalf of its member First Nations through a variety of channels. The Chiefs bring to bear the perspectives of their respective Nations and their expertise as long-time public officials. Unique among many tribal councils, the Grand Chief of CT6FN is a sitting Chief. CT6FN has an advisor in office who participates in the United Nations. CT6FN's role as an advocacy organization for Treaty 6 Nations is made all the more important by the fact that the Alberta region has been without representation at the AFN since 2021.

10. The overrepresentation of Indigenous children in care – particularly in Alberta – is well-known and dire. In Alberta, child and family services is covered under a unique funding arrangement called the Administrative Reform Agreement, or the "ARA" – which Treaty 6 Nations have never accepted but Canada and Alberta have unilaterally imposed on them in any event (in that regard, Treaty 6 differs from Treaties 7 and 8). CT6FN is aware of disparities in funding between Alberta and the Eastern provinces, and where Ontario is working with the Nations on reforming child and family services, Alberta has been a constant adversary.

11. CT6FN has a long history of interest and involvement in matters touching on the health and safety of children, as well as child and family services in Treaty 6. On January 25, 2017, the Chiefs of CT6FN approved and ratified the *Declaration of the Rights of Treaty No 6 First Nations Child and Family Wholistic Wellness*, enshrining principles for the protection of children from harm and discrimination, for “as long as the sun shines, the rivers flow, and the grass grows.”

12. CT6FN was also involved in the preparation of a template child and family services law drafted a C-92 law template for the use of its Member Nations in exercising jurisdiction under *An Act respecting First Nations, Inuit and Metis children, youth and families* (“**C-92**”). This work was led and completed by Wilton Littlechild, who has been recognized for his work at the UN. Many of CT6FN’s Member Nations are currently in the process of developing their own sovereign child welfare laws. Moreover, six of CT6FN’s Member Nations through local tribal council Tribal Chiefs Ventures Inc. intervened in the Supreme Court of Canada C-92 reference case with the support of the Chiefs of CT6FN.

13. When the Final Settlement Agreement (“**FSA**”) was presented by the AFN in October 2024 this was the first time that Treaty 6 Rights Holders were seeing the complete agreement and they were not given sufficient time to review, nor the opportunity to make amendments to the draft, nor requested information, and it did not reflect amendments or feedback from CT6FN’s Member Nations despite repeated requests. As such, the Nations in Assembly felt obligated to vote to reject the Draft FSA in order to uphold the autonomy of Rights Holders and their ability to govern and develop their own CFS programs, ultimately voting “no” by an over 60% margin.

14. The Chiefs also exercised their authority to replace AFN as negotiator on Long Term Reform and created a new body, the *National Children's Chiefs Commission* (“**NCCC**”) to take over negotiations. Representation on this new Commission was created to ensure inclusion of those external to the AFN or without regional representation. The NCCC has raised the concern that the OFA may be used as a template for continued negotiations with First Nations across Canada, including in Treaty 6. Indeed, the AFN Executive submitted to the CHRT on March 24, 2025, that “this Panel’s determination on the Ontario Final Agreement could set a benchmark to guide further discussions on a national process and may very well inform proposed relief to end Canada’s discrimination.” Canada has also indicated it does not “have the mandate to negotiate outside of Ontario.”

15. For this reason, the Chiefs of CT6FN met at a duly convened meeting on April 9, 2025 and passed motion M2-2025-04-09 titled “Application for Interested Party Status with the Canadian Human Rights Tribunal First Nations Child & Family Services Long Term Reform”, directing CT6FN on behalf of its rights-holding Nations to apply for Interested Party status in regards to the Joint Approval motion of the OFA. Given this mandate, and unique situation facing Alberta Nations, and Treaty 6 Nations in particular, CT6FN is in a unique position to speak to implications of the OFA that could have precedential impact for Alberta and Treaty 6 Nations.

b) The Applicant’s Involvement Will Add to the Legal Positions of the Parties

16. CT6FN’s involvement will bring a differing perspective and submissions to the proceeding in addition to those of the Parties (as well as other First Nation groups seeking Interested Party status).

17. It is the position of CT6FN that the draft FSA did not properly address the discrimination the Tribunal identified within the FNCFS program, including as it relates to Treaty 6 First Nations located in Alberta. If granted interested party status, the Applicant intends to provide the Tribunal with submissions as to how the OFA – which parallels the previously-rejected FSA – fails to end the discrimination found by the Tribunal to exist on a nation-wide basis, including by putting First Nations in a position where they may discriminate amongst their members on and off-reserve. This concern is particularly acute for Treaty 6 and Alberta First Nations.

18. In that regard, CT6FN will be able to speak to the unique challenges faced by Alberta and Treaty 6 Nations, and how a funding model or framework based on the OFA will fail to account for the many regional differences across the provinces and treaties. Among other things, Treaty 6 has the most non-delegated agencies in Alberta, a perspective that was not taken into consideration in the OFA or the prior FSA. Ultimately, there are huge variety of arrangements within Alberta, Treaty 6, and across Canada, and a one-size-fits-all funding model will not work – and given the likelihood that the OFA will become a model for funding across the country, the Tribunal is indeed faced with the prospect of approving a model that would be applied nationwide. Indeed, the rejected draft FSA is already being used in Canada's negotiation with Treaty 6 Nations as a limiting factor to funding arrangements. Moreover, in addition to the significant differences in circumstances across the country, the implementation of the OFA will depend in great deal on the goodwill of local provincial governments. While Ontario may have a constructive relationship with First Nations and be willing to work with them on CFS

issues, Alberta does not and CT6FN is concerned that this too is likely to result in continued discrimination.

19. CT6FN will also be able to speak to specific practical concerns in the OFA which are likely to impact Alberta and Treaty 6 Nations, such as concerns regarding the administration and secretariat to be established, concerns regarding data sovereignty and privacy, lack of clarity when it comes to funding and how that will impact delegated agencies. For example, the OFA does not address baseline funding in situations where non-affiliated Nations move to delegation – the currently existing agencies' funding is based on actuals for 2022-23 with no clarity around different expenditure levels for affiliated/non-affiliated. Treaty 6 has a wide variety of CFS arrangements across its Nations, and it is a particular concern that the non-delegated nations in particular were an afterthought in the draft FSA as well as the OFA.

c) The Outcome of the Joint Approval Motion Will Impact the Applicant's Interests

20. The Joint Approval Motion brought by the COO, NAN and Canada stands to impact the interests of the Member Nations CT6FN represents. As set out above, the Chiefs of these Nations, and others across the country, previously rejected the Draft FSA, which forms the basis for the OFA, in part because it does not adequately put an end to the discrimination for all First Nations children and families that the Tribunal found to exist within the FNCFS program. Rather, the Agreement has the effect of causing further discrimination amongst First Nations children and families, based on whether they reside on or off-reserve, as a result of the restrictions placed on the funding provisions by Canada.

21. If the Tribunal approves the OFA, it will be used by Canada as the framework for any future negotiations on long-term reform of the FNCFS program across the country. This is very problematic as it fails to account for the unique circumstances of each Nation – and indeed, each provincial region and Treaty area – that ought to be taken into account when determining whether discrimination in the provision of child and family services will continue. As set out above, there are significant differences in the funding and implementation of FNCFS in Alberta as compared to Ontario.

22. Additionally, if the Tribunal approves the OFA and Canada moves forward with using the Agreement as a template for other regional or province-specific agreements on long-term reform, this will directly conflict with the wishes of the rights-holding, sovereign First Nations who voted to reject the Draft FSA.

23. Approval of the OFA also stands to impact ongoing negotiations with Canada in which many Treaty 6 Nations are involved, to take back jurisdiction over child and family services to their members. The approval of the OFA may adversely impact these negotiations in that Canada may utilize the funding provisions as a benchmark to be applied to all First Nations across the country. This fails to recognize that these funding levels may not only be insufficient to end the discrimination found by the Tribunal but may also be insufficient to ensure that ongoing discrimination does not occur when a First Nation assumes control over child and family services under C-92.

24. This risks putting First Nations in similar positions to Canada in this proceeding, where they are forced to discriminate against their members in the provision of child and family services as a result of insufficient funding and held liable for that discrimination.

For this reason, not only are the funding provisions of the OFA relevant, but also the releases of liability provided for by the Agreement.

D. Conclusion

25. CT6FN respectfully requests that its motion for interested party status in the hearing of the OFA Approval Joint Motion be granted as set out in the Applicant's Notice of Motion. Specifically, that CT6FN be granted leave to provide written submissions of no more than twenty (20) pages on the substance of the OFA Approval Joint Motion, and to make oral submissions at the hearing of the motion. CT6FN does not intend to file any additional evidence or to participate in the cross-examination of any witnesses.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of April, 2025.



COCHRANE SINCLAIR LLP

1152 Mainland St Suite 200,
Vancouver, BC V6B 4X2

AARON CHRISTOFF

achristoff@cochranesinclair.ca